

REMARKS

We acknowledge the Examiner's indication that claims 2, 3, 5-7 and 10 would be allowable if amended to be independent form and to include all of the limitations recited in respective ones of base claims 1, 4 and 8 and any intervening claims.

The Examiner however has provisionally rejected claim 1, 4, 8, and 11-13 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 3 and 9 of application 11/178,889 (the '889 application).

Applicant does not agree that the pending claims of this application are not patentably distinct from those in the '889 application. However, Applicant points out that the provisional rejection is inappropriate, since it is the only rejection remaining to the pending claims. The MPEP, §804 I.B makes clear that a provisional rejection under these circumstances is improper:

The 'provisional' double patenting rejection should continue to be made by the examiner in each application as long as there are conflicting claims in more than one application unless that "provisional" double patenting rejection is the only rejection remaining in >at least< one of the applications.

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We submit therefore that the rejection should be withdrawn. The fee in the amount of \$120.00 for the One Month Extension of Time is being paid concurrently herewith on the Electronic Filing System (EFS) by way of Deposit Account authorization. Please apply all charges or credits to Deposit Account No. 06-1050, referencing Attorney Docket Number 10449-026001.

Respectfully submitted,

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